

ENTERED

May 08, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONLADDY CURTIS VALENTINE, *et al*,

Plaintiffs,

VS.

BRYAN COLLIER, *et al*,

Defendants.

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CIVIL ACTION NO. 4:20-CV-1115

ORDER

Pending before the Court are two motions relating to discovery: Plaintiffs' Motion to Modify Protective Order in *Cole v. Collier* (Doc. No. 29) and Defendants' Motion to Stay Discovery (Doc. No. 81). The Court previously ordered parties to confer as required by Rule 26(f). Parties were unable to reach agreement on a discovery plan and schedule. The Court accordingly held a hearing on May 8, 2020 to set a trial date and a plan for discovery.

Given the urgent nature of the case at hand and the fact that parties agree that the case should proceed on an expedited basis, the Court hereby sets trial for July 13, 2020. Parties are **ORDERED** to set discovery deadlines by agreement in accordance with this trial date.

Upon considering Plaintiffs' Motion to Modify Protective Order, the Court finds that Plaintiffs have not stated a sufficient reason to modify the protective order in *Cole v. Collier*. The Court is especially sensitive to the fact that documents produced in connection with the *Cole* litigation included medical records and other personal information belonging to *Cole* class members who are not putative class members in the *Valentine* litigation. Given that Plaintiffs' Motion was originally filed in preparation for an injunction hearing that has already taken place, and that discovery will now proceed on an expedited basis, the Court does not find that modifying

the protective order in *Cole* is necessary. Plaintiffs remain free to request specific documents or categories of documents that may have been produced by Defendants in connection with the *Cole* case in their requests for production of documents in the present litigation. For these reasons, Plaintiffs' Motion to Modify Protective Order in *Cole v. Collier* is **DENIED**.

The Court now turns to Defendants' Motion to Stay Discovery. Defendants argue that the Court should stay all discovery until either 1) the Fifth Circuit decides Defendants' interlocutory appeal of this Court's Preliminary Injunction Order or 2) this Court decides Defendants' Motion to Dismiss (Doc. No. 53). Defendants argue in the alternative that, if the Court allows discovery to proceed, discovery should be limited to threshold issues of subject matter jurisdiction, standing, and administrative exhaustion under the Prison Litigation Reform Act. Defendants have not cited any rules or laws that require the Court to stay discovery pending adjudication of an interlocutory appeal or a motion to dismiss. Indeed, Defendants note in their Motion that the district court holds "'broad discretion' in determining whether to stay proceedings," (Doc. No. 81, at 6 (quoting *Clinton v. Jones*, 520 U.S. 681, 706 (1997))), and even in the face of a pending interlocutory appeal, "the district court may still proceed with matters not involved in the appeal," *id.* at 4 (quoting *Taylor v. Sterrett*, 640 F.2d 663, 667–68 (5th Cir. 1981)). Accordingly, the Court finds that the urgent nature of the present suit necessitates expedited discovery. The speed at which COVID-19 spreads and the urgency with which the world has had to act in response to the pandemic outweigh Defendants' interests in waiting for the Fifth Circuit or this Court to narrow the issues before beginning discovery. Because the urgent nature of this case will require this case to develop on an expedited basis, the Court finds that Defendants' Motion to Stay Discovery must be **DENIED**.

Parties are **ORDERED** to file a joint Docket Control Order with agreed upon discovery deadlines.

The Court will defer deciding how any discovery plan affects proposed Plaintiff-Intervenors until after the Motion to Intervene (Doc. No. 76) has been fully briefed.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 8th day of May, 2020.

A handwritten signature in black ink, appearing to read "Keith P. Ellison". The signature is written in a cursive, flowing style.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE